

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
300 Oceangate Ste 850
Long Beach, CA 90802
(562) 983-1832
FAX: 562-499-6439



DATE:
November 03, 2009

In Reply Refer to Case No:
40-24280/235

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body Advanced Development & Investment Inc	Work Performed in County of San Diego
PROJECT NAME Arbor Terrace Project	Project No. 0
Prime Contractor Pacific Housing Diversified, Inc.	
Subcontractor National Fire Systems and Services	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Nonpayment of prevailing wages to workers of the above contractor on the above-stated project in violation of Labor Code section 1774. Specifically, subcontractor National Fire Systems and Services failed to report four workers in its certified payroll records ("CPRs") and failed to pay those workers the correct prevailing wage rates; paid workers reported on the CPRs less than the prevailing wage rates; and misclassified a worker as an Apprentice Laborer, even when such worker was not registered with the Division of Apprenticeship Standards.

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$170,360.81

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$37,395.00

The Division has determined that the amount of penalties assessed against National Fire Systems and Services under Labor Code section 1776 is: \$0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By Reynaldo S. Teyor
Deputy Labor Commissioner I

PW 33 (Revised - 3/2008)

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
2031 Howe Ave., Suite 100
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written **Request for Review**.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

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Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Reynaldo S. Tuyor
at the following address: 300 Oceangate Ste 850
Long Beach, CA 90802

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

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Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability of liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

In lieu of a cash deposit, the contractor may post an undertaking with the Department in full amount of the CWPA. The undertaking shall be on the condition that, if any decision is issued by the Director upholding the CWPA in any regard, the employer (contractor) shall pay the amount owed pursuant to the decision the date the decision is final under Labor Code Section 1742 unless the parties have executed a settlement agreement for the payment of some other amount, in which case the contractor shall pay the amount that the contractor is obligated to pay under the terms of the settlement agreement. The undertaking must provide that if the contractor fails to pay the amount owed within 10 days of the date the decision is final or the execution of the settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the Labor Commissioner to satisfy the amounts owed under the CWPA. A payment bond obtained by a contractor for the public works project which is the subject of the CWPA shall not be accepted as an undertaking unless the following two conditions are completely satisfied: (1) the payment bond provides for the payment of the full amount of the CWPA, including but not limited to, all wages, training, trust contributions, and penalties and (2) the conditions of payment set forth above are expressly agreed to by the affected contractor(s) and the surety which issued the payment bond. The undertaking should be forward to the Department as directed below. The Department's Accounting Office will hold the undertaking until the administrative and judicial review is completed. The disbursement of the bond funds will follow the same process as described above for a cash deposit.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is \$170,360.81

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$170,360.81</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$37,395.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$207,755.81</u>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☒ If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$170,360.81</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$37,395.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$207,755.81</u>

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

RELEASE AGREEMENT

This Agreement is made by the DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, State of California (hereafter "DLSE"), in favor of NATIONAL FIRE SYSTEMS & SERVICES, INC. (hereafter "NATIONAL") with reference to the following facts:

RECITALS

1. DLSE issued a Civil Wage and Penalty Assessment ("CWPA") on November 03, 2009, in DLSE Case No. 40-20589/120, claiming wages in the amount of \$170,360.81, and other amounts to be due and owing by NATIONAL as a result of alleged violations of the California Labor Code involving workers allegedly employed by NATIONAL through a contract with PACIFIC HOUSING DIVERSIFIED, INC. (hereafter "PACIFIC") on a public works project awarded by Advanced Development & Investment, Inc., known as Arbor Terrace (hereafter "PROJECT").

2. NATIONAL filed a Request for Review of the CWPA, which is now pending In the Matter of the Request for Review of National Fire Systems & Services, Inc. Office of the Director- Legal (ODL) Case No. 09-0252-PWH with the Office of the Director, Department of Industrial Relations (hereafter "THE LITIGATION").

3. DLSE and NATIONAL have agreed to resolve all disputes concerning the CWPA identified above as follows: Upon payment to the DLSE of \$47,000.00 in twelve equal monthly installments, beginning on July 15, 2010 and continuing on the 15th day of each

succeeding month until the total is paid, DLSE will release NATIONAL, PACIFIC, and FIRECOM TECHNOLOGIES, INC. (hereafter "FIRECOM") from the following claims for money: Unpaid prevailing wages, liquidated damages under Labor Code section 1742.1 and monetary penalties under Labor Code sections 1775 and 1813 (including interest, costs and attorney fees) resulting from any work performed by workers allegedly employed by NATIONAL through a contract with PACIFIC on the PROJECT and identified by name on the amended audit summary which is attached hereto as Exhibit "A" (hereafter "CLAIMS").

AGREEMENT

NOW, THEREFORE, in consideration of payment to the DLSE in the amount of \$47,000.00 in twelve equal monthly installments, upon said payment the undersigned hereby releases and forever discharges NATIONAL, PACIFIC, FIRECOM, their employees, officers, shareholders, sureties, principals, successors and assigns, attorneys and agents from all CLAIMS, as defined above, arising out of DLSE Case No. 40-24280/235 and ODL Case No. 09-0252-PWH. This is a full release of all such CLAIMS against NATIONAL, PACIFIC, and FIRECOM with regard to DLSE Case No. 40-24280/235 and ODL Case No. 09-0252-PWH, whether known or unknown, suspected or unsuspected.

It is understood and agreed that this settlement involves the compromise of disputed claims and that this Release Agreement, as well as any payment in connection therewith by NATIONAL shall not be deemed an admission of liability.

I hereby certify that I have read all of this Release Agreement, and fully understand same, and in witness thereof I have executed this Release Agreement on this ^{9th} day of June, 2011, at Sacramento, California.

Under penalty of perjury, the undersigned represents and warrants that he has full authority to execute this Release Agreement on behalf of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, and that no legislative act or judicial act or approval is necessary to give effect to this Release.

Dated: 6/9/11

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

By: _____



DAVID D. CROSS
Attorney for the Labor Commissioner